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SENATE BILL 307

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO COURTS; PROVIDING FOR A SPEEDY COURT HEARING WHEN A  
PROBATIONER IS PLACED IN DETENTION FOLLOWING AN ALLEGED  
VIOLATION; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-21-15 NMSA 1978 (being Laws 1963,  
Chapter 301, Section 13, as amended) is amended to read:

"31-21-15. RETURN OF PROBATION VIOLATOR. - -

A. At any time during probation:

(1) the court may issue a warrant for the  
arrest of a probationer for violation of any of the conditions  
of release. The warrant shall authorize the return of the  
probationer to the custody of the court or to any suitable  
detention facility designated by the court;

(2) the court may issue a notice to appear to

underscored material = new  
[bracketed material] = delete

1 answer a charge of violation. The notice shall be personally  
2 served upon the probationer; or

3 (3) the director may arrest a probationer  
4 without warrant or may deputize any officer with power of  
5 arrest to do so by giving him a written statement setting forth  
6 that the probationer has, in the judgment of the director,  
7 violated the conditions of his release. The written statement,  
8 delivered with the probationer by the arresting officer to the  
9 official in charge of a county jail or other place of  
10 detention, is sufficient warrant for the detention of the  
11 probationer. Upon arrest and detention, the director shall  
12 immediately notify the court and submit in writing a report  
13 showing in what manner the probationer has violated the  
14 conditions of release.

15 B. The court shall then hold a hearing, which may  
16 be informal, on the violation charged. When the probationer is  
17 placed in detention following his arrest for an alleged  
18 violation, the court hearing on the alleged violation shall be  
19 held no later than forty-eight hours after the probationer was  
20 placed in detention. If the violation is established, the  
21 court may continue the original probation or revoke the  
22 probation and either order a new probation with any condition  
23 provided for in Section 31-20-5 or 31-20-6 NMSA 1978 or require  
24 the probationer to serve the balance of the sentence imposed or  
25 any lesser sentence. If imposition of sentence was deferred,

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1 the court may impose any sentence which might originally have  
2 been imposed, but credit shall be given for time served on  
3 probation.

4 C. If it is found that a warrant for the return of  
5 a probationer cannot be served, the probationer is a fugitive  
6 from justice. After hearing upon return, if it appears that  
7 [he] the probationer has violated the provisions of his  
8 release, the court shall determine whether the time from the  
9 date of violation to the date of his arrest, or any part of it,  
10 shall be counted as time served on probation.

11 D. The board shall budget funds to cover expenses  
12 of returning probationers to the court. The sheriff of the  
13 county in which the probationer was convicted is the court's  
14 agent in the transportation of the probationer, but the  
15 director, with the consent of the court, may utilize other  
16 state agencies for this purpose when it is in the best interest  
17 of the state. "

18 Section 2. EFFECTIVE DATE. --The effective date of the  
19 provisions of this act is July 1, 2003.